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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 STEVEN CHRISTOPHER CRAIN,

Case No. 2:19-cv-02230-RFB-NJK

6 Petitioner,

7 ORDER

8 v.

9 NEVADA PAROLE AND PROBATION, et
10 al.,

Respondents.

11 Petitioner Steven Christopher Crain initiated this habeas action by filing a Petition for Writ
12 of Habeas Corpus (ECF No. 1) pursuant to 28 U.S.C. § 2254. This matter is before the Court for
13 initial review under the Rules Governing Section 2254 Cases.¹ For the reasons discussed below,
14 the Court dismisses the petition as a second or successive petition.

15 Pursuant to Habeas Rule 4, the assigned judge must examine the habeas petition and order
16 a response unless it “plainly appears” that the petitioner is not entitled to relief. Valdez v.
17 Montgomery, 918 F.3d 687, 693 (9th Cir. 2019). This rule allows courts to screen and dismiss
18 petitions that are patently frivolous, vague, conclusory, palpably incredible, or false. Hendricks v.
19 Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (collecting cases). The Court may also dismiss claims
20 at screening for procedural defects. Boyd v. Thompson, 147 F.3d 1124, 1128 (9th Cir. 1998).

21 Crain challenges a conviction and sentence imposed by the Eighth Judicial District Court
22 for Clark County, Nevada (“state court”). State of Nevada v. Crain, Case No. 00C166673.² In
23 September 2000, Crain pleaded guilty to one count of attempted lewdness with a child under the
24 age of 14. The state court sentenced him to 44–120 months of incarceration along with lifetime

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26 ¹ All references to a “Habeas Rule” or the “Habeas Rules” in this order identify the Rules Governing Section 2254 Cases in the United States District Courts.

27 ² The Court takes judicial notice of the online docket records of the state district court and appellate courts,
28 which may be accessed by the public online at: <https://www.clarkcountycourts.us/Anonymous/default.aspx>
and <http://caseinfo.nvsupremecourt.us/public/caseSearch.do>.

1 supervision. The original judgment of conviction was entered on October 25, 2000, and an
2 amended judgment was entered on May 30, 2002. Crain did not pursue a direct appeal. His
3 sentence was discharged on March 22, 2006.

4 The current action is Crain's sixth attempt to obtain federal habeas relief regarding his
5 Nevada conviction. He filed his first federal petition in this district in June 2009. Crain v. Nevada
6 Parole and Probation, Case No. 2:09-cv-1099-RLH-PAL. The Court dismissed the action as
7 untimely pursuant to 28 U.S.C. § 2244(d). Id., ECF No. 5 (Sept. 21, 2009 order). Both this Court
8 and the Court of Appeals for the Ninth Circuit denied a certificate of appealability. Crain
9 challenged his conviction again in Crain v. State of Nevada, Case No. 2:11-cv-2014-ECR-VCF.
10 The Court dismissed that action as untimely. Id., ECF No. 2 (Jan. 27, 2012 order). The Ninth
11 Circuit dismissed Crain's subsequent appeal for failure to pay the filing fees. Crain's third petition
12 in Crain v. Nevada Parole and Probation, Case No. 2:14-cv-1056-GMN-NJK, ECF No. 6 (Sept.
13 30, 2014 order), was dismissed as successive since federal habeas law required him to obtain
14 authorization from the Ninth Circuit to file a second or successive petition but he did not do so.
15 The Court referred the petition to the Ninth Circuit for consideration as an application to file a
16 second or successive petition, and the Ninth Circuit denied it. Crain's fourth petition was also
17 dismissed as second or successive. Crain v. Nevada Parole and Probation, Case No. 2:16-cv-1828-
18 KJD-CWH, ECF No. 4 (Oct. 26, 2016 order). The Ninth Circuit denied a certificate of
19 appealability. Most recently, in Crain v. Nevada Parole and Probation, Case No. 2:18-cv-0382-
20 JAD-CWH, ECF No. 4 (Mar. 6, 2018 order), the Court dismissed Crain's fifth petition as second
21 or successive. He did not seek a certificate of appealability from the Ninth Circuit.

22 “[D]ismissal of a section 2254 habeas petition for failure to comply with the statute of
23 limitations renders subsequent petitions second or successive for purposes of . . . 28 U.S.C.
24 § 2244(b).” McNabb v. Yates, 576 F.3d 1028, 1030 (9th Cir. 2009). A petition is second or
25 successive if it attacks the same judgment of conviction as a prior federal petition that was decided
26 on its merits and raises claims based on facts that had occurred by the time of the prior petition.
27 Brown v. Muniz, 889 F.3d 661, 667 (9th Cir. 2018), *cert. denied sub nom. Brown v. Hatton*, 139
28 S. Ct. 841, 202 L. Ed. 2d 610 (2019) (“It is now understood that a federal habeas petition is second

1 or successive if the facts underlying the claim occurred by the time of the initial petition, . . . and
2 if the petition challenges the same state court judgment as the initial petition. . . .”).

3 In the current petition, Crain asserts that his Alford plea was not voluntary because newly
4 discovered evidence demonstrates that he is factually innocent. He asserts that his conviction was
5 obtained through perjured testimony by the victim and her mother. He further alleges ineffective
6 assistance of counsel based on his public defender purportedly knowing and allowing prosecutors
7 to use the perjured testimony, and prosecutorial misconduct based on an alleged failure to disclose
8 exculpatory evidence pursuant to Brady v. Maryland, 373 U.S. 83 (1963). These are the same
9 allegations Crain advanced in his 2009 federal petition and he realleged in each of his subsequent
10 petitions. His current claims are therefore based on facts that existed at the time of his 2009 federal
11 petition, which renders the current petition second or successive.

12 Under 28 U.S.C. § 2244(b)(3), before a second or successive petition is filed in the federal
13 district court, the petitioner must move in the court of appeals for an order authorizing the district
14 court to consider the petition. A federal district court does not have jurisdiction to entertain a
15 successive petition absent such permission. Brown, 889 F.3d at 667. Crain does not indicate that
16 he has received authorization from the Court of Appeals to file this second or successive petition,
17 nor do the records of the Court of Appeals reflect that he obtained any such authorization.
18 Accordingly, the current petition is second or successive petition and must therefore be dismissed
19 for lack of jurisdiction.³

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21 ³ Even if the current petition was not second or successive, it is subject to dismissal as untimely. The
22 Antiterrorism and Effective Death Penalty Act (“AEDPA”) **Error! Main Document Only.**establishes a
23 one-year period of limitations to file a federal habeas petition pursuant to 28 U.S.C. § 2254. Judicially
24 noticeable facts indicate that Crain’s amended judgment of conviction was entered on May 30, 2002, and
25 he did not file a direct appeal. When no direct appeal is filed, a judgment of conviction becomes final when
26 the time period for seeking such review expires. 28 U.S.C. § 2244(d)(1)(A); Gonzalez v. Thaler, 565 U.S.
27 134, 137 (2012). In Nevada, a notice of appeal must be filed “with the district court clerk within 30 days
28 after the entry of the judgment or order being appealed.” Nev. R. App. P. 4(b)(1). Because Crain did not
appeal and the 30-day deadline fell on Saturday, June 29, 2002, his judgment became final on the following
business day: Monday, July 1, 2002. The AEDPA limitation period began running the following day and
expired on July 1, 2003. Crain filed his first federal petition nearly six years later. This Court specifically
considered and rejected his arguments for equitable tolling. Crain v. Nevada Parole and Probation, Case
No. 2:09-cv-01099-RLH-PAL, ECF No. 5 (Sept. 21, 2009 dismissal order). The Ninth Circuit denied Crain
a certificate of appealability. Accordingly, the current petition is patently time-barred.

IT IS THEREFORE ORDERED THAT:

1. Petitioner Steven Christopher Crain's Petition for Writ of Habeas Corpus (ECF No. 1) is DISMISSED for lack of jurisdiction as a second or successive petition.
2. Crain is DENIED a certificate of appealability, as jurists of reason would not find the dismissal of the petition on jurisdictional grounds to be debatable or wrong.
3. The Clerk of Court shall enter final judgment accordingly and CLOSE this case.
4. Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, the Clerk of Court will add Nevada Attorney General Aaron D. Ford as counsel for Respondents and informally serve the Nevada Attorney General by directing a notice of electronic filing of this order to his office. No response is required from Respondents other than to respond to any orders of a reviewing court.

DATED this 7th day of January, 2020.


RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE